

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs January 23, 2009

**STATE OF TENNESSEE, DEPARTMENT OF CHILDREN'S SERVICES
v. V.E.F.**

**Appeal from the Juvenile Court for Maury County
No. 71314, 71315 George Lovell, Judge**

No. M2008-01514-COA-R3-PT - Filed March 9, 2009

Mother appeals the termination of her parental rights to her two children. The trial court terminated Mother's parental rights on multiple grounds, including abandonment by failing to establish a suitable home and failure to remedy persistent conditions, and upon the finding that termination of her parental rights was in the children's best interests. The evidence clearly and convincingly supports the trial court's findings that Mother abandoned her children by failing to establish a suitable home, that she failed to remedy persistent conditions, and that termination of her parental rights is in the children's best interests. We, therefore, affirm.

**Tenn. R. App. P. 3 Appeal as of right; Judgment of the Juvenile Court
Affirmed in Part; Reversed in Part**

FRANK G. CLEMENT, JR., J., delivered the opinion of the court, in which ANDY D. BENNETT and RICHARD H. DINKINS, JJ., joined.

L. Samuel Patterson, Jr., Columbia, Tennessee, for the appellant, V.E.F.

Robert E. Cooper, Jr., Attorney General and Reporter, Michael E. Moore, Solicitor General, and Jill Z. Grim, Assistant Attorney General, for the appellee, State of Tennessee, Department of Children's Services.

OPINION

The defendant, V.E.F. ("Mother"), is the mother of two minor children, V.A.F. and J.A.F. The children came to the attention of the Department of Children's Services (the "Department") on February 22, 2005, following an incident at the children's school. On that day, Mother was called to the children's school due to the fact her seven-year-old son, J.A.F. (hereinafter "Jack")¹, was suicidal and threatening to harm other children. Mother arrived at the school and immediately

¹"Jack" is a fictitious name for seven-year-old J.A.F. The fictitious name is used in this opinion to protect the identity of the child and because initials provide for cumbersome reading.

removed Jack against the orders of a school resource officer and teacher. The principal followed Mother to her car encouraging her to return to the school to discuss the matter. Mother agreed to go back in the school when Jack agreed to speak to the principal; however, once inside the school, Mother refused to speak with school personnel about the situation and refused medical and psychiatric care for Jack.

An emergency protective order was obtained for both children that day. Jack was immediately placed in Vanderbilt Children's Psychiatric Hospital where he remained until March 2, 2005. Mother's nine-year-old daughter, V.A.F. (hereinafter "Leigh")², was placed in foster care that day as well; however, she was returned to Mother the next day. When Jack was released from the hospital, he was placed in foster care where he has remained ever since.

A permanency plan for Jack was created on March 16, 2005. The overall goal of the plan was to reunify the child with Mother or adoption. Pursuant to the plan, Mother was to: (1) participate in a mental health intake and follow recommendations from that intake; (2) participate in counseling that addresses anger management/conflict resolution and learn techniques to help her have a more positive outcome; (3) participate in a parenting assessment, follow recommendations from that assessment, and learn more positive parenting techniques; and (4) participate in an educational/counseling session that focuses on her children's specific mental health issues to better understand them, learn effective ways of parenting her children in relation to their special needs, and follow recommendations. The permanency plan states that Mother "refused to participate at staffing," and Mother refused to sign the plan. Mother later testified that she refused to sign anything from the Department "because they pull little tricks."

Leigh remained in Mother's care and custody until March 26, 2005. It was on that date that Mother used Leigh in a scheme to unlawfully remove Jack from foster care. After an Amber Alert had been issued, the police found Jack with Mother. Mother was arrested and charged with criminal responsibility for facilitation of a felony,³ and Jack was returned to state custody. As an additional consequence, Leigh was placed in foster care, where she has remained ever since.

On April 15, 2005, the Department created a permanency plan for Leigh, the overall goal of which was to reunify Leigh with Mother or adoption. Mother's requirements were substantially similar to those in Jack's plan, but this plan also required Mother to resolve her pending criminal charges for facilitation of a felony and custodial interference and not incur new charges. The permanency plan for Leigh also states that Mother did not attend the permanency plan staffing, and, as with Jack's plan, she did not sign the plan.

²"Leigh" is a fictitious name for the nine-year-old daughter V.A.F. The fictitious name is used in this opinion to protect the identity of the child and because initials provide for cumbersome reading.

³Mother subsequently pled guilty to custodial interference.

In separate orders entered May 23, 2005 (Jack) and July 21, 2005 (Leigh), both children were adjudicated dependent and neglected.⁴

A second permanency plan was created for each child in March 2006; each plan was essentially the same. The second permanency plans added the requirements that Mother contact an anger counselor or mental health provider within thirty days and sign a release for the Department to get records, find a home that is safe and provide for the needs of the children, and apply for services to meet the financial needs of the children.

A permanency hearing was held on April 24, 2006, for both children at which time the court found that the Department was in compliance with the permanency plan and was making reasonable efforts toward reunification, but that Mother needed to substantially comply with the tasks set forth in the permanency plans. The March 2006 permanency plans were also ratified at this hearing.

As required by the permanency plans, Mother completed a mental health intake; however, Mother did not sign the release for the Department to know what recommendations were made. Mother also participated in Department-provided parenting classes and family support services, including anger management, from June 2006 through September 2006. The parenting classes were designed to help Mother deal with Jack's ADHD and emotional disturbance, but Mother still refused to accept that Jack had mental health or emotional disturbance issues.

Unfortunately, Mother's participation in the Department-provided services did not alter Mother's attitude or behavior. On September 27, 2006, Mother was involved in a domestic altercation with the children's Father in the presence of the children, during which she struck or slapped him, for which she was arrested and subsequently pled guilty to domestic assault. Mother's visitation with Jack was suspended shortly thereafter and never reinstated. Mother continued supervised visitation with Leigh; however, Mother was oftentimes unable to provide an appropriate environment for visitation with Leigh.⁵ Mother alternated between living in a motel and with friends, and at times the conditions at the visitation sites were such that the case workers refused to allow Leigh to enter the premises.

On February 26, 2007, the Department filed a petition to terminate Mother's parental rights.⁶ In the petition, the Department contended, *inter alia*, that the conditions that led to the removal of

⁴Jack was adjudicated dependent and neglected in an order entered May 23, 2005. In that same order, the court found that the Department had not met its burden with regard to Leigh in the hearing on March 21, 2005, which occurred before Mother's arrest for custodial interference; however, after a subsequent hearing on May 9, 2005, Leigh was found to be dependent and neglected by clear and convincing evidence. That order was entered on July 21, 2005.

⁵Some of the places Mother attempted to have visitation with Leigh were motel rooms, retail stores, and friends' homes that were filthy.

⁶The children's Father was also named in the petition, however, he surrendered his parental rights on April 30, 2007, and is not a party to this appeal.

the children still existed and that Mother had abandoned the children by failing to establish a suitable home. Further, the Department alleged that termination of Mother's parental rights was in the children's best interests. The matter went to trial on October 22, 2007, and November 2, 2007. By Order dated June 5, 2008, the trial court granted the Department's petition to terminate Mother's parental rights on multiple grounds, including the grounds of persistence of conditions, abandonment by failing to establish a suitable home, and mental incompetence.⁷ The court also found that termination of her parental rights was in the best interests of the children. This appeal followed.

Mother appeals challenging the sufficiency of the evidence establishing grounds for termination, the reasonableness of the Department's efforts, and the best interests of the children.⁸

ANALYSIS

Parents have a fundamental right to the care, custody and control of their children. *Stanley v. Illinois*, 405 U.S. 645, 651 (1972); *Hawk v. Hawk*, 855 S.W.2d 573, 577 (Tenn. 1993). This right is superior to the claims of other persons and the government, yet it is not absolute. *In re S.L.A.*, 223 S.W.3d 295, 299 (Tenn. Ct. App. 2006).

Parental rights may be terminated only where a statutorily defined ground exists. Tenn. Code Ann. § 36-1-113(c)(1); *Jones v. Garrett*, 92 S.W.3d 835, 838 (Tenn. 2002); *In re M.W.A.*, 980 S.W.2d 620, 622 (Tenn. Ct. App. 1998). The petitioner has the burden of proving that there exists a statutory ground for termination, such as abandonment or failing to remedy persistent conditions, that led to the removal of the child. Tenn. Code Ann. § 36-1-113(c)(1); *Jones*, 92 S.W.3d at 838. Only one ground need be proved, so long as that ground is proved by clear and convincing evidence. *See In re D.L.B.*, 118 S.W.3d 360, 367 (Tenn. 2003). In addition to proving one of the grounds for termination, the petitioner must prove that termination of parental rights is in the child's best interest. Tenn. Code Ann. § 36-1-113(c)(2); *In re F.R.R.*, 193 S.W.3d 528, 530 (Tenn. 2006); *In re A.W.*, 114 S.W.3d 541, 544 (Tenn. Ct. App. 2003); *In re C.W.W.*, 37 S.W.3d 467, 475-76 (Tenn. Ct. App. 2000) (holding a court may terminate a parent's parental rights if it finds by clear and convincing evidence that one of the statutory grounds for termination of parental rights has been established and that the termination of such rights is in the best interests of the child). Therefore, a court may terminate a person's parental rights if (1) the existence of at least one statutory ground is proved by clear and convincing evidence and (2) it is clearly and convincingly established that termination of the parent's rights is in the best interests of the child. Tenn. Code Ann. § 36-1-113(c); *In re Adoption of A.M.H.*, 215 S.W.3d 793, 810 (Tenn. 2007); *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002).

⁷The Department has conceded that the evidence is insufficient to prove the ground of mental incompetence; therefore, we reverse the finding of mental incompetence.

⁸Mother challenged all the grounds for termination found by the trial court; however, our ruling as to persistence of conditions and abandonment by failing to establish a suitable home renders the other grounds moot as only one ground for termination need be proven. *See In re D.L.B.*, 118 S.W.3d 360, 367 (Tenn. 2003).

Whether a statutory ground has been proven by the requisite standard of evidence is a question of law to be reviewed de novo with no presumption of correctness. *In re B.T.*, No. M2007-01607-COA-R3-PT, 2008 WL 276012, at *2 (Tenn. Ct. App. Jan. 31, 2008) (no Tenn. R. App. P. 11 application filed) (citing *In re Adoption of A.M.H.*, 215 S.W.3d at 810).

ABANDONMENT

A parent's parental rights may be terminated on the ground of abandonment. Tenn. Code Ann. § 36-1-113(g)(1). The statute defines abandonment, in relevant part, as follows:

The child has been removed from the home of the parent(s) . . . as the result of a petition filed in the juvenile court in which the child was found to be a dependent and neglected child, as defined in § 37-1-102, and the child was placed in the custody of the department or a licensed child-placing agency, that the juvenile court found, or the court where the termination of parental rights petition is filed finds, that the department or a licensed child-placing agency made reasonable efforts to prevent removal of the child or that the circumstances of the child's situation prevented reasonable efforts from being made prior to the child's removal; and for a period of four (4) months following the removal, the department or agency has made reasonable efforts to assist the parent(s) . . . to establish a suitable home for the child, but that the parent(s) . . . have made no reasonable efforts to provide a suitable home and have demonstrated a lack of concern for the child to such a degree that it appears unlikely that they will be able to provide a suitable home for the child at an early date.

Tenn. Code Ann. § 36-1-102(1)(A)(ii).

Both children were originally removed by an emergency protective order after Mother refused to acknowledge Jack's mental health needs following a suicide attempt and threats of harming other students at school in February 2005. Leigh, who had been briefly removed and then returned to Mother, again came into custody in March 2005 after Mother used Leigh to unlawfully remove Jack from his foster home.

Following the removal of the children, the Department provided over \$17,000 worth of services to Mother and the children, including anger management and parental counseling. The Department's efforts, however, were ineffective because Mother refused to cooperate. Mother admitted at trial that she refused to work with the Department and that she refused to tell the Department her schedule, where she lived, or where she worked. She also refused to sign the mental health release for the Department to know what mental health assessments and recommendations were made by the counselors. Further, Mother has repeatedly refused to cooperate with the Department towards establishing a suitable home for the children. It is well-established that the affirmative duty to make reasonable efforts is not solely on the Department. The duty to make reasonable efforts is "a two-way street." *State Dep't. of Children's Servs. v. S.M.D.*, 200 S.W.3d

184, 198 (Tenn. Ct. App. 2006). Thus, the parent has a corresponding duty to communicate with the Department and to actively cooperate in those efforts. *Id.*

In the two years the children have been in custody, Mother has failed to obtain stable or suitable housing. She moved frequently, living with various friends at different, undesirable locations, including a friend's filthy home and an extended stay in a low-rent motel. Mother testified these were suitable places for the children to live; they were not.

Mother's transient life continued through the trial of this case. On the first day of trial, Mother testified that she had an apartment that would be ready to move into that day. In the event it was not ready, Mother testified she would stay with friends. On the second day of trial, which was ten days later, Mother testified that the apartment had fallen through but that she had found another one-bedroom apartment where she had been living since earlier that week.

The evidence in the record convincingly establishes that for a period of far in excess of the statutory four months following the children's removal from Mother's custody, Mother rejected the Department's efforts and Mother made no reasonable efforts to provide a suitable home for the children. The evidence also convincingly establishes that she demonstrated a chronic lack of concern for the children to such a degree that it is wholly unlikely that she will be able to provide a suitable home for the children at an early date. Therefore, we affirm the trial court's finding of the ground of abandonment by failure to establish a suitable home pursuant to Tenn. Code Ann. § 36-1-102(1)(A)(ii).

PERSISTENT CONDITIONS

Another ground for termination of a parent's rights is that the child has been removed from the parent's home by order of a court for a period of six months and:

- (A) The conditions that led to the child's removal or other conditions that in all reasonable probability would cause the child to be subjected to further abuse or neglect and that, therefore, prevent the child's safe return to the care of the parent(s) . . . , still persist;
- (B) There is little likelihood that these conditions will be remedied at an early date so that the child can be safely returned to the parent(s) . . . in the near future; and
- (C) The continuation of the parent . . . and child relationship greatly diminishes the child's chances of early integration into a safe, stable and permanent home.

Tenn. Code Ann. § 36-1-113(g)(3).

Mother's refusal to recognize Jack's mental health needs was a condition that led to the children's removal, and it is a condition that still persists. Jack was admitted to Vanderbilt

Children's Psychiatric Hospital on February 22, 2005, because he was suicidal and threatening to harm other children at his school. Jack remained in the psychiatric hospital until March 2, 2005; yet, Mother refused to visit her seven-year-old child, leaving him in the hospital without the support of his mother.

She also insists that Jack "doesn't have a mental problem," despite Jack being diagnosed as learning disabled, emotionally disturbed, and with ADHD. Even though Jack originally came into custody because he was threatening to harm other children and himself, Mother insists she was not aware Jack had an anger problem. To make things worse, Mother involved her nine-year-old daughter, Leigh, in unlawfully removing Jack from his foster home. The record clearly shows that Mother is incapable of accepting reality, and she has put both of her children in danger. Mother's biggest problem is that she does not believe that there is a problem and that she does not have to do anything different to get her children back. Clearly, this is not the case.

As for conditions that in all reasonable probability would cause the children to be subjected to further neglect and thereby prevent the children's safe return to the care of Mother, we find it very significant that Mother's visitation with Jack had been terminated more than a year before trial and not reinstated. As for Leigh, we find it very significant that of the twenty supervised visits with Leigh occurring between December 2006 and March 2007, only once did Mother provide a suitable home for visitation. At times, the case worker refused to allow the visits because of the deplorable conditions at the homes, apartments, or motel where Mother was staying. One of the filthy homes in which she resided, and attempted visitation with Leigh, was a one bedroom home occupied by five dogs with the mange.

Although Mother finds living in a motel and moving back and forth between friends to be an appropriate living environment for her children, it is not. In addition to failing to establish suitable housing, thereby not remedying a serious and persistent condition, Mother has failed to recognize the critical mental health needs of her son, Jack, and involved her daughter in a criminal act. Mother's refusal to acknowledge her serious deficiencies and to make any effort toward regaining custody of her children evidences the fact that the conditions still persist that led to the children's removal; as a result, the children cannot safely return to Mother's care. Therefore, we affirm the trial court's finding of the ground of persistence of conditions.

THE CHILDREN'S BEST INTERESTS

The trial court also found that termination of Mother's parental rights was in the children's best interests. In determining whether termination of parental rights is in the best interests of a child, the court is to consider certain statutory factors, including the following:

- (1) Whether the parent . . . has made such an adjustment of circumstance, conduct, or conditions as to make it safe and in the child's best interest to be in the home of the parent . . . ;

- (2) Whether the parent . . . has failed to effect a lasting adjustment after reasonable efforts by available social services agencies for such duration of time that lasting adjustment does not reasonably appear possible;
- (3) Whether the parent . . . has maintained regular visitation or other contact with the child;
- (4) Whether a meaningful relationship has otherwise been established between the parent . . . and the child;
- (5) The effect a change of caretakers and physical environment is likely to have on the child's emotional, psychological and medical condition;
- (6) Whether the parent . . . , or other person residing with the parent . . . , has shown brutality, physical, sexual, emotional or psychological abuse, or neglect toward the child, or another child or adult in the family or household;
- (7) Whether the physical environment of the parent's . . . home is healthy and safe, whether there is criminal activity in the home, or whether there is such use of alcohol or controlled substances as may render the parent . . . consistently unable to care for the child in a safe and stable manner;
- (8) Whether the parent's . . . mental and/or emotional status would be detrimental to the child or prevent the parent . . . from effectively providing safe and stable care and supervision for the child; or
- (9) Whether the parent . . . has paid child support consistent with the child support guidelines promulgated by the department pursuant to § 36-5-101.

Tenn. Code Ann. § 36-1-113(i).

When Jack was first placed in foster care he was “very, very aggressive” and his foster father had to go to school frequently to deal with Jack acting out at school, due to his inability to control his anger. He often fought with his teachers and was only a C or D student. At the time of trial, Jack was an A and B student, the teachers who previously had problems with Jack said they were “now crazy about him,” and his foster father described Jack as “a perfect kid.” When asked whether he wanted to return to live with Mother, Jack stated that he had not seen her in a long time,⁹ and he wanted to live with his foster parent and visit Mother. Jack's foster father testified that he desired to adopt Jack.

⁹ By court order, Mother's supervised visitation with Jack was terminated a year prior to this case going to trial.

As for Leigh, her foster mother testified that she had a lot of problems with Leigh when she first arrived, but she has learned to overcome problems. She also testified that she had a lot of difficulty with Leigh following each of Leigh's visitations with Mother; that Leigh would curse and not "mind her" when she returned from visiting Mother. The Department's case workers testified that out of twenty supervised visits with Leigh, Mother only once provided a suitable place for the supervised visit to occur, which was the home of Mother's adult son with whom Mother resided briefly. When asked whether she wanted to return to live with Mother, Leigh stated that she did not know if she wanted to live with Mother.¹⁰ Leigh's foster parents testified that they desired to adopt Leigh.

Considering the relevant statutory factors regarding the best interests of the children, a reasonable person could only come to one conclusion, that it is no longer in the best interests of the children to continue this parent-child relationship. More than two years after the children were placed in foster care, Mother has failed to secure safe and suitable housing for herself or the children, and, as the trial court correctly found, Mother "has not made changes in her conduct or circumstances that would make it safe for the children to return home." Mother's emotional state would be detrimental to the children and would prevent her from effectively providing safe and stable care and supervision for the children. Moreover, each child is in a stable and loving environment with foster parents who desire to adopt the children and a change of caretakers and physical environment is very likely to have a significant adverse effect on the children's emotional and medical condition. We, therefore, affirm the trial court's finding that termination of Mother's parental rights is in the best interests of both children.

IN CONCLUSION

Although the evidence does not support a finding of the ground of mental incompetence, as is conceded by the Department, the evidence clearly and convincingly supports the trial court's findings that Mother abandoned her children by failing to establish a suitable home and that she failed to remedy persistent conditions. Thus, two statutory grounds for termination of Mother's parental rights have been established, and the evidence clearly and convincingly supports the trial court's finding that termination of her parental rights is in the children's best interests. We, therefore, affirm the termination of Mother's parental rights.

This matter is remanded with costs of appeal assessed against the Department of Children's Services, due to Mother's indigency.

FRANK G. CLEMENT, JR., JUDGE

¹⁰ Jack and Leigh both equivocated about living with Mother, but both stated they did not want her parental rights terminated.